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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CS Docket No. 96-98
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REPLY COMMENTS OF MOTOROLA, INC.

Motorola, Inc. ("Motorola") submits these reply comments in response to the Notice of Proposed Rulemaking ("*NPRM*") in the above-captioned matter and the comments filed May 20, 1996 on the *NPRM*.[1] Pursuant to the Telecommunications Act of 1996 (the "1996 Act"), the *NPRM* seeks to promote competition in telecommunications markets through interconnection of carriers' facilities and equipment. While Motorola supports the pro-competitive objectives of this important initiative, it believes that the rules proposed by the Commission to implement this portion of the 1996 Act must be carefully tailored to avoid inadvertently retarding the growth of new telecommunications services.

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[1] Motorola is a global leader in the provision of wireless communications, semiconductors, and advanced electronic systems. Motorola has used its expertise in radio frequency technology to develop the CableComm™ system, which transforms a hybrid fiber/coaxial ("HFC") system into a two-way, interactive network capable of delivering telecommunications services. As a supplier of equipment to both LECs and cable operators, Motorola shares the Commission's objective in this proceeding of crafting rules that facilitate full competition in the telecommunications market.

In particular, Motorola is concerned that LECs' provision of information about technical changes to their networks and facilities could compromise equipment manufacturers' confidentiality interests and intellectual property rights. Accordingly, Motorola endorses the several proposals made by commenters urging the Commission to carefully balance the need for disclosure of technical information against the need to preserve marketplace incentives for investment in new technology. In addition, Motorola is troubled by the possibility that the 1996 Act might be misinterpreted to require premature dissemination of technical information. Consequently, Motorola urges the Commission, at a minimum, to clarify that a LEC need not disclose information prior to its determination to finally implement a network change.

I. THE RECORD SUPPORTS FCC ADOPTION OF MECHANISMS TO ENSURE THE PROTECTION OF MANUFACTURERS' LEGITIMATE PROPRIETARY INTERESTS

The Commission should adopt safeguards to ensure that technical information disclosure requirements do not abrogate manufacturers' intellectual property rights. Section 251(c)(5) of the 1996 Act requires incumbent LECs to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any

other changes that would affect the interoperability of those facilities and networks."[2] The *NPRM* asks how the Commission can ensure that LEC provision of this technical information does not compromise the proprietary interests of manufacturers.[3]

Motorola concurs with commenters that urge the Commission to take steps to protect the integrity of intellectual property rights of manufacturers providing LECs with equipment and other technology. Specifically, the Commission should confirm that a LEC may condition disclosure of technical information regarding a third-party manufacturer's technology -- to the extent that such information involves proprietary or confidential material -- on the recipient's execution of a licensing agreement with the manufacturer.[4]

The Section 251(c)(2) disclosure requirement neither mentions nor contemplates the compulsory sharing of patents, copyrights, trademarks, or trade secrets. Such an interpretation of the statute would impermissibly abrogate invaluable intellectual

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[2] This disclosure obligation applies only to incumbent LECs and not to new entrants such as cable operators and other carriers that did not provide local telephone exchange service in an area as of the enactment date of the 1996 Act. *See* 1996 Act, sec. 101, § 251(h)(1).

[3] *NPRM* at ¶ 194.

[4] *See* Comments of Northern Telecom Inc. at 4-5; *see also* Comments of BellSouth Inc. at 5-6 (disclosing party should be allowed to require the recipient of the information to execute a confidentiality agreement with the manufacturer, which could include indemnification, liquidated damages, and other appropriate enforcement provisions.)

property rights and would constitute poor public policy. Indeed, without the proprietary protections afforded by intellectual property law, manufacturers would have little incentive to invest substantial sums in the research and design of new technology. As a result, consumers of telecommunications services would be deprived of new services and price competition would be impeded. Accordingly, the Commission should expressly state that disclosure of technical data, to the extent that it involves proprietary information, is subject to a manufacturer's underlying intellectual property rights.[5]

II. TO ENSURE THE CONTINUED DEVELOPMENT OF NEW TELECOMMUNICATIONS EQUIPMENT AND SERVICES, THE COMMISSION SHOULD NOT REQUIRE PREMATURE DISCLOSURE OF TECHNICAL INFORMATION

In formulating disclosure rules, the Commission should exercise care to avoid inadvertently undermining investment in new technology. Specifically, the Commission should, at a minimum, clarify that an incumbent LEC is not required to disclose information prior to finally determining to implement a network change. In the highly

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[5] In addition, the Commission's final rules should take into account the negative impact of disclosure requirements on manufacturer's ability to compete in the global telecommunications market. For example, while a U.S. manufacturer has one year from the date of public dissemination of its technology to file for a patent to ensure protection of the technology, no such security period exists under international patent law. Hence, overly stringent domestic disclosure requirements could have the unintentional effect of eroding the intellectual property rights of U.S. firms abroad.

competitive telecommunications equipment marketplace, a manufacturer's "lead time" in bringing a product or technology to market is critical to its ultimate success. Indeed, the speed with which new technology is "rolled out" increasingly distinguishes market winners from losers. Accordingly, disclosure of technical information too early in the development process would subvert efficient market behavior and severely damage a firm's market position.

Moreover, premature disclosure would destroy incentives for manufacturers to aggressively invest in the development of new technology. Manufacturers that are unwilling to make such investments could use the information to "free ride," shortening or eliminating the innovating firm's lead. While Motorola believes that disclosure of technical information at the proper time will tend to facilitate the pro-competitive goals of the 1996 Act, it urges the Commission to balance disclosure against the need to protect investment in intellectual property and proprietary or sensitive information in the early stages of determining the viability of a new technology.

While the opening comments in this proceeding differ as to what point in time a LEC should be required to provide technical information, no commenter has called for disclosure of technical information related to a trial. Even parties that advocate disclosure at the "earliest possible point" (*i.e.*, when a LEC decides to implement a change to its network affecting interconnection), do not argue for disclosure at the

testing or trial stage, which is well before any final decision by the LEC to deploy the technology.[6]

By facilitating the speedy and efficient deployment of new services, trials serve the public interest. Trials allow a carrier to evaluate the performance of a new technology, while also enabling the provider to move the technology from the laboratory to the field, where unanticipated bugs and glitches can be discovered and addressed. This process benefits not only carriers and manufacturers, but also consumers of new services, who can expect timely roll out of new services and reliable operation of even the most advanced new technology.

By crafting rules that balance the statutory directive for provision of technical information with the need to avoid premature disclosure, the Commission would ensure that carriers and manufacturers continue to develop new and innovative technologies for the benefit of American consumers, while also furthering the interconnection, unbundling, and competition goals of the 1996 Act.

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[6] Typically, trials are limited in duration and involve a select user group comprising a very small percentage of a carrier's total subscribers.

III. CONCLUSION

Consistent with the foregoing, Motorola respectfully urges the Commission to tailor its rules regarding LEC disclosure of technical information to preserve manufacturers' incentives to invest in new technology and to maintain efficient marketplace mechanisms for rapid deployment of that technology.

Respectfully submitted,

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